



THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

HON. SYLVIA O. HINDS-RADIX
Corporation Counsel

THOMAS LAI
Senior Counsel
E-mail: tlai@law.nyc.gov
Phone: (212) 356-2336
Fax: (212) 356-3509

September 19, 2022

VIA ECF

Honorable Gabriel W. Gorenstein
United States Magistrate Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

MEMORANDUM ENDORSED

Re: *Holmes v. Trapasso, et al.*,
21-CV-10628 (VEC)(GWG)

Your Honor:

I am a Senior Counsel in the Office of the Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, and I am writing on behalf of the Office of Corporation Counsel as an interested party in the above referenced matter. Interested party Office of the Corporation Counsel writes to respectfully request that the Court, *sua sponte*, grant an enlargement of time, from today to October 24, 2022, for individual defendants James Trapasso and Ralph Pena to answer or otherwise respond to the Amended Complaint. This is the first request for such an extension for these individual defendants. Plaintiff's counsel consents to this enlargement request.

By way of background, Plaintiff brings this action, pursuant to 42 U.S.C. 1983, against defendants Trapasso, Vanwieren-Johnson, and Pena, alleging claims of malicious prosecution and denial of the right to a fair trial stemming from his arrest on or about November 23, 2010. *See* Amended Complaint (Dkt. No. 10) at 4. Plaintiff further alleges that, on or about September 14, 2021, all criminal charges against him were dismissed and the prosecution was terminated in his favor. *See id.*

As to the procedural history, the Court granted Corporation Counsel's request, *sua sponte*, for an extension of time to answer or to otherwise respond to the amended complaint for defendant Vanwieren-Johnson. *Document Entry #21*. The time for defendant Vanwieren-Johnson was enlarged to October 24, 2022. *Id.* As indicated in Corporation Counsel's prior request for

defendant Vanwieren-Johnson, there are several reasons for granting, *sua sponte*, an extension of time for defendants Trapasso and Pena to answer or otherwise respond to the Amended Complaint in this matter. First, in accordance with this Office's obligations under Rule 11 of the Federal Rules of Civil Procedure, this Office needs time to investigate the allegations set forth in the Amended Complaint. As such, the requested enlargement of time will allow this Office time to procure and review adequate documents and information to investigate the allegations in the Amended Complaint, such as the underlying police, criminal court, and District Attorney's Office records. In light of plaintiff's allegations, it appears that the relevant police and criminal prosecution records are sealed pursuant to New York Criminal Procedure Law § 160.50. Undersigned counsel acknowledges that the §160.50 release has been provided by Plaintiff counsel, this Office has processed the release, and this Office is in the process of procuring the relevant documents for review.

Furthermore, this Office must determine, pursuant to Section 50-k of the New York General Municipal Law and based on a review of the case, whether it will represent defendants Trapasso and Pena in this action. They must then decide whether they wish to be represented by this Office. If so, this Office must obtain their written authorization. Only after this process has been followed can this Office determine how to proceed in this case. (*See* General Municipal Law § 50(k); *see also* *Mercurio v. The City of New York, et al.*, 758 F.2d 862, 864-65 (2d Cir. 1985); *see also* *Williams v. City of New York, et al.*, 64 N.Y.2d 800, 486 N.Y.S.2d 918 (1985) (noting that the decision to bestow legal representation upon individual defendants is made by the Corporation Counsel as set forth in state law)).

Therefore, for the reasons stated above, interested party the Office of Corporation Counsel respectfully requests that the Court, *sua sponte*, grant an enlargement of time to October 24, 2202 for defendants Trapasso and Pena to answer or otherwise respond to the Amended Complaint.

Thank you for your consideration of the instant application.

Respectfully submitted,

/s/ Thomas Lai

Thomas Lai

Senior Counsel

Special Federal Litigation Division

To: **VIA ECF**
Edward Sivin
Attorney for Plaintiff

The deadline for defendants James Trapasso and Ralph Pena to answer or otherwise respond to the Amended Complaint is extended to October 24, 2022.

So Ordered.


GABRIEL W. CORENSTEIN
United States Magistrate Judge

September 20, 2022